

October 21, 2011

MINUTES
ILLINOIS CIVIL SERVICE COMMISSION
October 21, 2011

I. OPENING OF MEETING AT 11:05 A.M. AT 160 N. LASALLE STREET, SUITE S-901, CHICAGO, ILLINOIS

II. PRESENT

Chris Kolker, Chairman (by telephone); Raymond W. Ewell, Barbara J. Peterson, and Betty A. Bukraba, Commissioners; Daniel Stralka, Executive Director; Andrew Barris (by telephone), Assistant Executive Director; Roneta Taylor (by telephone), Bill Lipsmire (by telephone), and Mark Magill (by telephone), Illinois Department of Central Management Services; Jackie Clisham, Illinois Racing Board; and Jeanine Hamm (by telephone) and Beth Duesterhaus (by telephone), Administrative & Regulatory Shared Services Center.

III. APPROVAL OF MINUTES OF REGULAR MEETING HELD ON SEPTEMBER 16, 2011

IT WAS MOVED BY COMMISSIONER EWELL, SECONDED BY COMMISSIONER BUKRABA, AND THE MOTION ADOPTED 4-0 TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 16, 2011.

IV. EXEMPTIONS UNDER SECTION 4d(3) OF THE PERSONNEL CODE

A. Report on Exempt Positions from Illinois Dept. of Central Management Services

<u>Agency</u>	<u>Total Employees</u>	<u>Number of Exempt Positions</u>
Aging.....	145.....	10
Agriculture	489.....	17
Arts Council	19.....	2
Capitol Development Board	46.....	0
Central Management Services	1,597.....	113
Children and Family Services.....	2,918.....	49
Civil Service Commission	4.....	0
Commerce & Economic Opportunity	410.....	67
Commerce Commission	79.....	0
Corrections	11,906.....	103
Criminal Justice Authority.....	61.....	5
Deaf and Hard of Hearing Comm.....	7.....	1
Developmental Disabilities Council	9.....	1
Emergency Management Agency	92.....	7
Employment Security	1,879.....	25
Environmental Protection Agency.....	898.....	16
Financial & Professional Regulation	467.....	42
Gaming Board	116.....	5
Guardianship and Advocacy	104.....	7
Healthcare and Family Services	2,247.....	27
Historic Preservation Agency	244.....	11
Human Rights Commission.....	14.....	2
Human Rights Department	151.....	8
Human Services.....	13,419.....	77
Illinois Power Agency	1.....	2
Illinois Sentencing Policy Advisory Council.....	2.....	2
Illinois Torture Inquiry Relief Commission	2.....	1
Insurance	254.....	12
Investment Board	3.....	1
Juvenile Justice.....	1,280.....	20
Labor	89.....	8
Labor Relations Board Educational	11.....	2
Labor Relations Board State.....	20.....	2
Law Enforcement Training & Standards Bd.	17.....	2
Medical District Commission.....	2.....	0
Military Affairs.....	121.....	3
Natural Resources.....	1,450.....	29
Pollution Control Board	21.....	1
Prisoner Review Board.....	19.....	0
Property Tax Appeal Board.....	27.....	1
Public Health	1,104.....	41
Racing Board.....	2.....	0
Revenue.....	2,018.....	62
State Fire Marshal	145.....	12
State Police.....	1,278.....	5
State Police Merit Board	5.....	1
State Retirement Systems	89.....	2
Transportation	2,327.....	0
Veterans' Affairs	1,291.....	8
Workers' Compensation Commission.....	174.....	8
TOTALS.....	49,073.....	820

Governing Rule – Section 1.142 Jurisdiction B Exemptions

- a) The Civil Service Commission shall exercise its judgment when determining whether a position qualifies for exemption from Jurisdiction B under Section 4d(3) of the Personnel Code. The Commission will consider any or all of the following factors inherent in the position and any other factors deemed relevant to the request for exemption:
 - 1) The amount and scope of principal policy making authority;
 - 2) The amount and scope of principal policy administering authority;
 - 3) The amount of independent authority to represent the agency, board or commission to individuals, legislators, organizations or other agencies relative to programmatic responsibilities;
 - 4) The capability to bind the agency, board or commission to a course of action;
 - 5) The nature of the program for which the position has principal policy responsibility;
 - 6) The placement of the position on the organizational chart of the agency, board or commission;
 - 7) The mission, size and geographical scope of the organizational entity or program within the agency, board or commission to which the position is allocated or detailed.
- b) The Commission may, upon its own action after 30 days notice to the Director of Central Management Services or upon the recommendation of the Director of the Department of Central Management Services, rescind the exemption of any position that no longer meets the requirements for exemption set forth in subsection (a). However, rescission of an exemption shall be approved after the Commission has determined that an adequate level of managerial control exists in exempt status that will insure responsive and accountable administrative control of the programs of the agency, board or commission.
- c) For all positions currently exempt by action of the Commission, the Director of Central Management Services shall inform the Commission promptly in writing of all changes in essential functions, reporting structure, working title, work location, position title, position number or specialized knowledge, skills, abilities, licensure or certification.
- d) Prior to granting an exemption from Jurisdiction B under Section 4d(3) of the Personnel Code, the Commission will notify the incumbent of the position, if any, of its proposed action. The incumbent may appear at the Commission meeting at which action is to be taken and present objections to the exemption request.

(Source: Amended at 34 Ill. Reg. 3485, effective March 3, 2010)

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B. Requests for 4d(3) Exemption

- As to Item C, this request is for the Associate Agency Procurement Officer for the Department of Children and Family Services, a position that reports to the Deputy Director of Procurements/Agency Purchasing Officer who reports to the Director. The position description for this position indicates it has “principal administrative responsibility for the determination and execution of procurement policy” for the agency and serves as “second-in-command” of the agency’s Office of Procurement. The Deputy Director position description indicates it “acts authoritatively as principal policy formulating administrator for division procurement” and “serves as an expert authority in the planning and development of all aspects of policy for the sourcing and contracting of all procurements specific to DCFS.”

The first problem with this request is the lack of any principal authority in its program area. It all appears to lie with the Deputy Director position and the use of “principal” in its position description directly conflicts with the language describing the duties of the Deputy Director. The Commission is statutorily limited to approving requests for positions that have principal administrative responsibility for the determination of policy or for the way in which policies are carried out. That appears to be exclusively with the Deputy Director.

The second problem is with the program area – procurement – that the agency is seeking to base this exemption on. Procurement is not a subject matter area of the agency. However, for over 50 years the Commission has approved a limited number of exemptions in this area. Effective September 1, 2010 Public Acts 96-795 and 96-920 established a new structure for State procurement. Without going into excessive detail, responsibility and authority for State agency procurement has now been entrusted to Chief Procurement Officers and State Procurement Officers who are appointed by the Executive Ethics Commission. As the law now states, these Chief Procurement Officers “shall exercise all procurement authority created by this Code.” This has caused an ongoing dialogue with both Central Management Services and the Executive Ethics Commission to determine whether this program area – procurement – may still be utilized as the basis for any 4d(3) exemptions. That dialogue continues as this new procurement process is being implemented. For the limited purpose of evaluating this request, it is doubtful that there exists sufficient authority in this position – regardless of how that ongoing issue is eventually resolved – to support a principal policy exemption when considered against the seven factors as listed in Commission rules. For these reasons, Staff recommended that this request be denied.

Chairman Kolker indicated he had concerns over the collective bargaining status of this position and the indication that similar positions had been granted exemption in the past. As there was no agency representative present to respond to these inquiries, Chairman Kolker suggested that this matter be continued until the November meeting.

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- As to Item D, this request is for the Chief Fiscal Officer/Executive Officer for the Illinois Racing Board, a position that reports to the Executive Director. This position has a variety of responsibilities for the Racing Board that have traditionally supported the granting of a principal policy exemption such as Chief Fiscal Officer and Labor Relations Administrator. For these reasons, Staff recommended approval of this request.

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 4-0 TO CONTINUE AND GRANT THE REQUESTS FOR 4D(3) EXEMPTION FOR THE FOLLOWING POSITIONS:

- C: Associate Agency Procurement Officer (Children and Family Services)**
- D: Chief Fiscal Officer / Executive Officer (Racing Board)**

The following 4d(3) exemption request was continued to November 18, 2011 on October 21, 2011:

C. Illinois Department of Children and Family Services

Position Number	40070-16-64-100-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Procurement and Contracts
Functional Title	Associate Agency Procurement Officer
Incumbent	Vacant
Supervisor	Deputy Director of Procurement and Contracts who reports to the Director
Location	Sangamon County

The following 4d(3) exemption request was granted on October 21, 2011:

D. Illinois Racing Board

Position Number	40070-50-68-100-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Director's Office
Functional Title	Chief Fiscal Officer / Executive Officer
Incumbent	Vacant
Supervisor	Executive Director
Location	Cook County

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V. CLASS SPECIFICATIONS

The following class titles were submitted for creation by the Director of the Illinois Department of Central Management Services:

- Sex Offender Therapist I
- Sex Offender Therapist II

Assistant Executive Director Andrew Barris inquired from Bill Lipsmire at Central Management Services Technical Services about the number of positions that would fall within the two newly created classes. Lipsmire stated that the Department of Corrections anticipated five positions would be created throughout the State of Illinois. Barris and Lipsmire discussed the viability of the Behavioral Analyst classes in performing the duties of the new class. Lipsmire explained that the Behavioral Analyst classes dealt primarily with mental retardation without requiring experience with sex offenders while the new classes of Sex Offender Therapist I and II required professional experience counseling sex offenders and approval from the Illinois Sex Offender Management Board. Commissioner Ewell inquired as to how many sex offenders were in the State of Illinois prison system. After the meeting, Bill Lipsmire provided via e-mail information indicating that there are 7,500 prisoners, and approximately 571 additional individuals who are on parole/mandatory supervised release in the State of Illinois prison system.

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER BUKRABA AND THE MOTION ADOPTED 4-0 TO APPROVE THE CREATION OF THE FOLLOWING CLASS TITLES TO BE EFFECTIVE NOVEMBER 1, 2011:

- Sex Offender Therapist I
- Sex Offender Therapist II

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 4-0 TO DISAPPROVE ANY CLASS SPECIFICATIONS RECEIVED BY THE COMMISSION NOT CONTAINED IN THIS REPORT TO ALLOW ADEQUATE STUDY.

VI. MOTION TO GO INTO EXECUTIVE SESSION

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE THE MOTION ADOPTED 4-0 TO HOLD AN EXECUTIVE SESSION PURSUANT TO SUBSECTIONS 2(c)(1), 2(c)(4), AND 2(c)(11) OF THE OPEN MEETINGS ACT.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	
BUKRABA	YES		

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VII. RECONVENE MEETING

Upon due and proper notice the regular meeting of the Illinois Civil Service Commission was reconvened at 160 North LaSalle Street, Suite S-901, Chicago, Illinois at 11:47 a.m.

PRESENT

Chris Kolker (by telephone), Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba, and Ares G. Dalianis, Commissioners; Daniel Stralka, Executive Director; and Andrew Barris (by telephone), Assistant Executive Director.

VIII. NON-MERIT APPOINTMENT REPORT

The Personnel Code permits non-merit appointments for a limited period of time, i.e., emergency appointments shall not exceed 60 days and shall not be renewed, and positions shall not be filled on a temporary or provisional basis for more than six months out of any twelve-month period. Consecutive non-merit appointments are not violative of the Code; however, they do present a possible evasion of merit principles and should be monitored. Set forth below is the number of consecutive non-merit appointments made by each department. These statistics are from the Department of Central Management Services' Consecutive Non-Merit Report.

Agency	8/31/11	9/30/11	9/30/10
Aging	1	0	1
Agriculture	4	12	5
Central Management Services	3	2	0
Children and Family Services	5	4	7
Employment Security	5	8	8
Healthcare and Family Services	4	4	6
Historic Preservation Agency	7	8	1
Human Services	2	0	4
Natural Resources	29	28	32
Property Tax Appeal Board	5	4	0
Revenue	1	0	0
State Fire Marshal	1	1	1
Transportation	1	3	6
Veterans' Affairs	1	1	0
Workers' Compensation Commission	1	1	0
Totals	70	76	71

IX. INTERLOCUTORY APPEAL

S-14-12

Employee	Kelly L. Wagnitz	Appeal Date	09/07/11
Agency	Revenue	Decision Date	10/04/11
Type	Suspension	ALJ	Daniel Stralka
Issue(s)	Employee did not appear at scheduled hearing	Proposal for Decision	Dismiss the appeal; default (no show at hearing).

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED THAT THE ADMINISTRATIVE LAW JUDGE FOUND A QUESTION OF LAW, FACT, OR POLICY WHICH IF RESOLVED BY THE COMMISSION WOULD MATERIALLY ADVANCE THE RESOLUTION OF THE DISPUTE. THE COMMISSION FURTHER FINDS THAT HER FAILURE TO APPEAR AT THE HEARING CONSTITUTES A DEFAULT, RESULTING IN THE DISMISSAL OF HER APPEAL. IN ACCORDANCE THEREWITH, THE DECISION OF THE ADMINISTRATIVE LAW JUDGE TO DISMISS THE APPEAL IS AFFIRMED AND ADOPTED.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

X. PUBLICLY ANNOUNCED DECISIONS RESULTING FROM APPEALS

DA-51-11

Employee	Nancy A. Williams	Appeal Date	05/13/11
Agency	Human Services	Decision Date	10/04/11
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Conduct unbecoming	Proposal for Decision	60-day suspension plus duration of suspension pending discharge.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 4-1 THE MOTION ADOPTED TO AFFIRM, MODIFY, AND ADOPT THE PROPOSAL FOR DECISION THAT THE CHARGES HAVE BEEN PROVEN AND WARRANT 60-DAY SUSPENSION IN LIEU OF DISCHARGE AS RECOMMENDED BY THE ADMINISTRATIVE LAW JUDGE. A 60-DAY SUSPENSION IS EXCESSIVE GIVEN THE FAILURE OF THE AGENCY TO ESTABLISH A LEGAL OBLIGATION ON WILLIAMS' PART TO NOTIFY THE AGENCY OF HER EMPLOYMENT. THEREFORE, SAID PROVEN

CHARGES WARRANT A SUSPENSION FOR A PERIOD OF 30 DAYS PLUS THE DURATION OF HER SUSPENSION PENDING DISCHARGE.

KOLKER YES EWELL NO
PETERSON YES DALIANIS YES
BUKRABA YES

DA-2-12

Employee	Kimberly C. Reed	Appeal Date	07/08/11
Agency	Human Services	Decision Date	10/07/11
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Failure to perform assigned duties	Proposal for Decision	Charges are proven but warrant 30-day suspension plus duration of suspension pending discharge.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER PETERSON, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE PROPOSAL FOR DECISION THAT THE CHARGES HAVE BEEN PROVEN BUT WARRANT A 30-DAY SUSPENSION PLUS THE DURATION OF HER SUSPENSION PENDING DISCHARGE IN LIEU OF DISCHARGE FOR THE REASONS SET FORTH IN THE PROPOSAL FOR DECISION DATED OCTOBER 7, 2011.

KOLKER YES EWELL YES
PETERSON YES DALIANIS YES
BUKRABA YES

S-50-11

Employee	Kimberly C. Reed	Appeal Date	05/09/11
Agency	Human Services	Decision Date	10/07/11
Type	Suspension	ALJ	Daniel Stralka
Charge(s)	Failure to perform duties and responsibilities	Proposal for Decision	Charges are proven; suspension upheld.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE’S PROPOSAL FOR DECISION THAT THE CHARGES ARE PROVEN AND WARRANT SAID SUSPENSION FOR THE REASONS SET FORTH IN THE PROPOSAL FOR DECISION DATED OCTOBER 7, 2011.

KOLKER YES EWELL YES
PETERSON YES DALIANIS YES
BUKRABA YES

DA-4-12

Employee	Mark D. Conwill	Appeal Date	07/15/11
Agency	Revenue	Decision Date	10/07/11
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Conduct unbecoming	Proposal for Decision	Charges are proven; discharge upheld.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION THAT THE CHARGES ARE PROVEN AND WARRANT DISCHARGE FOR THE REASONS SET FORTH IN THE PROPOSAL FOR DECISION DATED OCTOBER 7, 2011.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

XI. APPEALS TERMINATED WITHOUT DECISION ON THE MERITS

DA-32-10

Employee	Althea D. Williams	Appeal Date	02/01/10
Agency	Corrections	Decision Date	09/27/11
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Violation of policy on drug testing for employees	Proposal for Decision	Dismissed subject to approval of Commission; Stipulation to Dismiss filed by parties.

DA-23-12

Employee	Sheri Hendrian	Appeal Date	09/27/11
Agency	Veterans' Affairs	Decision Date	10/06/11
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Recipient abuse; failure to report incident	Proposal for Decision	Dismissed subject to approval of Commission; withdrawn.

S-3-12

Employee	Mark D. Conwill	Appeal Date	07/15/11
Agency	Revenue	Decision Date	10/07/11
Type	Suspension	ALJ	Andrew Barris
Charge(s)	Suspension pending judicial verdict	Proposal for Decision	Dismissed subject to approval of Commission; withdrawn.

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IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGES' PROPOSALS FOR DECISION TO DISMISS THE ABOVE APPEALS FOR THE REASONS SET FORTH IN THE PROPOSALS FOR DECISION.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

XII. STAFF REPORT

- No discussion.

XIII. ANNOUNCEMENT OF NEXT MEETING

Announcement was made of the next regular meeting to be held on Friday, November 18, 2011 at 1:00 p.m. in the Commission's Springfield office.

XIV. MOTION TO ADJOURN

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER PETERSON, AND THE MOTION ADOPTED 5-0 TO ADJOURN THE MEETING AT 11:52 A.M.